

1 OBF issue that had been raised. OBF issue 1921 in
2 this case.

3 MR. LERNER: Can you identify OBF?

4 MR. SMITH: Yes, the Ordering and Billing
5 Forum, it is an organization under the auspices of
6 ATIS, Alliance for Telecom Industry --
7 Telecommunications Industry Service, I think -- or
8 Solutions, excuse me.

9 BY MR. STUBBS:

10 Q So I gather this is a document that's been
11 prepared by Verizon?

12 A Yes.

13 Q It was mailed out to CLECs?

14 A Yes, it was.

15 Q Now, it references OBF 1921, but in fact,
16 this is not the actual manifestation of OBF 1921;
17 isn't that right?

18 A I'm not sure I understand what you mean by
19 that.

20 Q Well, what is OBF?

21 A It's the Ordering and Billing Forum. It
22 is a group that meets and recommends industry

1 guidelines on how to populate the EMI, or exchange
2 message interface, records that are used or
3 exchanged between carriers for purposes of billing.

4 Q And so I assume the word "forum" implies
5 it's not just a Verizon body; is that right?

6 A That's correct. It's made up of industry
7 participants throughout the country.

8 Q And you already testified that this
9 document was prepared by Verizon?

10 A That's correct.

11 Q So this document was not prepared by OBF?

12 A That's correct. It was prepared to meet
13 the guidelines under OBF 1921.

14 MR. STUBBS: I request leave to mark
15 another document for identification purposes and
16 impeachment. I'll mark it C-6.

17 (Exhibit C-6 identified.)

18 BY MR. STUBBS:

19 Q This document marked C-6 is a one-page
20 document entitled "Ordering and Billing Forum, issue
21 identification form," is it not?

22 A It is.

1 Q Does it make reference to OBF 1921?

2 A It does.

3 Q Does it indicate that this is -- well, let
4 me ask you, do you recognize this document or have
5 you ever seen anything like it?

6 A I have seen documents like this. I don't
7 think I've seen this individual document.

8 Q What does this document appear to be to
9 you?

10 A It appears to be a draft resolution from
11 the --

12 Q The drafters -- pardon me.

13 A From the, it appears -- from August 21,
14 2001. Excuse me, August 21 of 2000.

15 Q And would it be fair to say that this
16 document marked C-6 predates the document marked
17 C-5? The OBF document predates the Verizon
18 document?

19 A It may. Again, only because I don't have
20 the date this was actually distributed, I can't say
21 that it absolutely does.

22 Q Okay. Does it also indicate, "it" being

1 C-6, that this issue category is resolved?

2 A It does say "resolved," but it also says
3 that final closure is to occur at a later date.

4 Q Where is that?

5 A Up on -- right above where it says
6 "resolved," "final closure is to be at the OBF on
7 November of 2000."

8 Q Do you know of any subsequent document
9 that replaces or otherwise modifies this document?

10 A I don't know whether there is or there
11 isn't a subsequent document.

12 Q Okay. Now, if you would look at the
13 middle of C-6, where it begins on the category
14 11-01-XX records. Is there any counterpart text in
15 the C-5 document?

16 MS. NEWMAN: I'm going to object to the
17 pending question. Are you asking Mr. Smith to
18 testify about the draft Ordering and Billing Forum
19 document and hook it up to this other document
20 prepared by Verizon?

21 MR. STUBBS: I'll withdraw the question.

22 BY MR. STUBBS:

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1 Q Mr. Smith, take your time. Please review
2 document C-6 and compare it to document C-5, and
3 tell me if you believe there was any reliance by
4 Verizon or other influence felt by Verizon from this
5 document C-5 in preparing document C-6.

6 MR. LERNER: Excuse me, now I have -- I'm
7 confused. I think Verizon prepared C-5.

8 MR. STUBBS: Strike 2 for Stubbs. Let me
9 try again.

10 BY MR. STUBBS:

11 Q Please review C-6 and C-5. You've already
12 established that C-6, if we take the documents for
13 what they purport to say, probably predated C-5.

14 MS. NATOLI: It definitely did, because
15 C-5 says "effective with the December 23, 2001
16 release." So it was sometime after 2001. So I
17 think we can establish that and move on. Because
18 it's right in C-5 at the first line.

19 MS. NEWMAN: I guess I'm going to have an
20 objection, and I know you finished your second
21 attempt at this question. But there's no foundation
22 that this witness -- first of all, he saw this for

1 the first time. He did not author -- "this" being
2 C-6 for the court reporter. And he's already
3 testified he did not author C-5. So I think you're
4 asking him a question that's beyond the scope of his
5 direct and beyond the scope of his knowledge, at
6 least based on the questions that you've asked so
7 far.

8 MR. STUBBS: Fair enough. We will
9 establish a foundation.

10 BY MR. STUBBS:

11 Q Mr. Smith, does Verizon issue changes or
12 dictate ordering and billing information without
13 referring to what OBF decides and states?

14 A I'm sorry, would you repeat that?

15 Q Would Verizon provide a CLEC-wide notice
16 about the populating of originating and terminating
17 OCN fields on category 11 records, without
18 considering the input of OBF?

19 A Verizon attempts to follow the OBF
20 guidelines.

21 Q Okay. Now, I'm not asking you whether you
22 prepared this document. But based on your expertise

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1 at understanding how Verizon works, can you just
2 compare C-6 and C-5, and based on your knowledge of
3 the way Verizon works, does it appear to you that
4 Verizon relied on C-6 before releasing C-5?

5 MS. NEWMAN: Again, C-6 is the draft
6 resolution of the OBF. Mr. Stubbs, while the
7 witness is reviewing the documents, do you have a
8 copy of a final resolution?

9 MR. STUBBS: I believe Mr. Smith testified
10 that he knows of no more recent document.

11 MS. NEWMAN: I'm asking you, do you have a
12 copy of the final resolution.

13 MR. STUBBS: To the extent that there is
14 one, no, I don't have one. To the extent that this
15 is the last document, I have what purports to be a
16 document on these dates, of these dates.

17 MS. NATOLI: Excuse me, I mean, my
18 familiarity with the OBF forum is that oftentimes,
19 this is how they conclude a resolution. They don't
20 issue a new one that says final resolution, but the
21 box up at the top, which is right up here
22 (indicating), it gives you kind of basically the

1 history. And I don't know if this is added after
2 the fact or whatever, but it indicates that this was
3 closed, this issue, on November 8, 2000, and that
4 the issue is resolved. At least I think as far as
5 FCC staff is concerned, this would be considered a
6 final adopted resolution.

7 MR. STUBBS: I could ask the bureau to
8 take administrative notice that this was produced
9 off of the Web site yesterday, of OBF or ATIS.

10 BY MR. STUBBS:

11 Q Mr. Smith, have you had a chance to review
12 both documents?

13 A I'm in the process of doing it.

14 (Witness reviewed the document.)

15 Okay. I have reviewed the document, first
16 part of it. Can you state your question again?

17 Q Sure. Can you look at the second -- the
18 first and second paragraphs after the words "draft
19 resolution" on the C-6 document, the language that
20 begins with "on the category 11-01-XX records" and
21 finishing with the words "used for local
22 interconnection."

1 A Okay. I see that.

2 Q Okay. Is it fair to say that that
3 language followed the -- that from -- that language,
4 excuse me, follows the third paragraph of C-5?

5 A The paragraph in C-5 that says "OBF issue
6 1921 on the category 11-01-XX," is that what you're
7 referring to?

8 Q No, I'm actually referring to the next
9 paragraph.

10 A On the category 11-50?

11 Q That's right.

12 A Then the first paragraph on C-6 does not
13 track to the 11-50 paragraph.

14 Q Okay, my mistake. It does, in fact, track
15 to the language you first tried to lead me to, isn't
16 that right, that the paragraph following "draft
17 resolution" and the three numbered points correspond
18 to the second complete paragraph on C-5?

19 A Yes, the paragraph that comes right after
20 the bolded "populate originating and terminating OCN
21 fields."

22 Q Is it fair to say that the paragraph on

1 C-6 that begins "it was recognized that the tandem
2 company" corresponds to the paragraph on C-5 that
3 begins "it was recognized by OBF that"?

4 (Witness reviewed the document.)

5 A It corresponds to the first sentence of
6 that on C-5.

7 Q Okay. Now, does it actually say in C-6
8 that OBF recognized Verizon would not be able to
9 correctly populate the originating company OCN?

10 A Does it say "Verizon" on C-6 is what
11 you're asking me?

12 Q That's right.

13 A No, it doesn't say Verizon. Verizon would
14 be the tandem company that is referred to on C-6.

15 Q Okay. Now, the third sentence in C-5
16 reads "if the CIC is not present, i.e., defaulted to
17 zeros, then OCNs must be populated." Isn't that
18 right?

19 A On C-5, it says "if the CIC is not present
20 or defaulted to zeros, then the OCN must be
21 populated," and it goes on to say "the originating
22 OCN fields of the category 11-01-XX and the 11-50-XX

1 should be populated when the following three
2 conditions occur," and it lists the three
3 conditions.

4 Q That language does not appear in OBF 1921
5 as represented here in C-6; isn't that right?

6 A That would be correct. It does not appear
7 in C-6. That is additional information that Verizon
8 has provided to the industry.

9 Q That Verizon initiated?

10 A Yes.

11 Q Unilaterally?

12 A It is in addition to what the OBF has put
13 on its guidelines here.

14 Q Does that mean yes?

15 A It means that these are industry
16 guidelines and Verizon has provided additional
17 information to the CLEC community.

18 Q I would like you to now turn to the last
19 sentence of the next paragraph.

20 MS. NEWMAN: On which document?

21 MR. STUBBS: C-5, my apologies.

22 BY MR. STUBBS:

1 Q Where it reads "the originating and
2 terminating OCNs will be populated in the record
3 whenever available." Do you see that?

4 A That whole section, it says that the OCNs
5 can be populated in addition to the CIC, if a
6 company such as a CLEC uses a CIC for
7 interconnection. You know, then the CIC would be
8 populated and the originating company number would
9 be present on the category 11 record.

10 Q And the next sentence reads "the
11 originating and terminating OCNs will be populated
12 in the record whenever available"; is that right?

13 A Whenever available.

14 Q Now, does that sentence appear in document
15 C-6, the OBF 1921?

16 A No, it does not.

17 Q Okay. And is it fair to say that C-5 does
18 not indicate what number Verizon would populate in
19 the event the originating and terminating OCNs were
20 not available?

21 A I'm sorry, which document, C-5?

22 Q In C-5, is it fair to say Verizon does not

1 indicate to CLECs how it's going to populate those
2 fields, if the originating and terminating OCNs are
3 not available?

4 (Witness reviewed the document.)

5 A I don't believe it does go on to say how
6 they would be populated if the information is not
7 available.

8 Q Is it fair to say there is nothing there
9 that restricts in any way what Verizon will do to
10 populate that field?

11 MS. NEWMAN: Are we talking about in C-5
12 again?

13 MR. STUBBS: Yes, that's right.

14 THE WITNESS: I don't see anything there.

15 BY MR. STUBBS:

16 Q Is it fair to say there is no indication
17 to a CLEC that reads this how to make sense of any
18 number Verizon puts in that field if they don't have
19 an originating and terminating OCN?

20 A I'm not sure whether a CLEC would or would
21 not understand what to do.

22 Q If a CLEC --

1 MR. LERNER: Let me point out, right now
2 you've used up pretty much the time we've allotted,
3 but the questioning -- your line of questioning
4 you're engaging in right now is similar to what
5 staff would be asking anyway, so we'll allow you to
6 continue.

7 MR. STUBBS: Thank you.

8 MS. NATOLI: But do remember we've got the
9 other two issues associated with this to cover, too.

10 MR. STUBBS: Certainly, thank you.

11 BY MR. STUBBS:

12 Q Is it fair to say a CLEC reviewing this
13 would have no way of knowing how Verizon would
14 populate that field in the event Verizon had no
15 originating and terminating OCN?

16 A They might not.

17 Q Is there anything that indicates how a
18 CLEC could understand what Verizon --

19 A I guess if the CLEC participated in OBF,
20 these are the type of issues that are discussed at
21 that forum. To the extent, you know, this is sent
22 out as an industry mailing, it is sent to CLECs. If

1 CLECs have a question, they can respond to Verizon
2 and ask for clarification.

3 Q Are you saying Cavalier has never
4 requested clarification on that point?

5 A I'm not saying that, and I'm not aware of
6 it if they have or haven't, on that specific point.

7 MR. STUBBS: No further questions.

8 MR. LERNER: That's for issues 3, 4 and 5?

9 MR. STUBBS: I apologize. Nothing more on
10 C3. Just a few on C4 and 5.

11 BY MR. STUBBS:

12 Q Mr. Smith, changing gears, isn't it true
13 on the issue of C4 in your direct testimony, page
14 13, line 2, you state that you "agree with
15 Cavalier's proposal in principle"?

16 A I believe I did say that. Where was it
17 again in here?

18 Q Page 13, line 2.

19 A Yes, it does say that.

20 Q And did you not reiterate that point on
21 rebuttal, at page 8, line 8 of your rebuttal
22 testimony, that Verizon "agrees in principle with

1 Cavalier's proposal"?

2 A Yep.

3 Q Under Verizon's language, Verizon has a
4 right of indemnification that Cavalier does not;
5 isn't that correct?

6 A Under Verizon's proposed language, because
7 while we have agreed in principle, the language that
8 we have proposed reflects the fact that Cavalier
9 does not provide the service, so there really isn't
10 a reciprocal obligation at this point in time.
11 Verizon has indicated our willingness, should
12 Cavalier begin to provide that service, that we
13 would negotiate language around the provision of
14 that service, and at that point I would assume that
15 we would agree to the same type of reciprocity with
16 respect to indemnification.

17 Q As currently drafted, Verizon's proposed
18 language provides Verizon with indemnification
19 rights that Cavalier does not get; is that right?

20 A At this point, because Cavalier, I don't
21 believe, needs those at this point, because they are
22 not providing the service.

1 Q Yes. Is that a yes?

2 A It's -- the answer is that the language
3 doesn't contain indemnification, because Cavalier is
4 not providing the service, and it therefore doesn't
5 need it at this point.

6 Q Isn't it fair to say that if a month after
7 this agreement is implemented, Cavalier was to
8 provide such a service, Cavalier would have no such
9 indemnification rights under this interconnection
10 agreement?

11 A I would assume that if Cavalier was going
12 to start providing a new service, we would negotiate
13 an amendment to the agreement.

14 Q So you would bring us right back here
15 again?

16 A Well, I would hope that we wouldn't have
17 to come back here again, since we have agreed in
18 principle.

19 Q The question is withdrawn. Does not the
20 language proposed by Verizon mandate that Cavalier
21 accept the third-party charges, while giving Verizon
22 a right to decide whether to accept that -- the

1 passage of the third-party charges?

2 A I'm sorry, can you repeat that again?

3 Q Doesn't the language proposed by Verizon
4 require Cavalier to accept the third-party charges,
5 while imposing no such mandate on Verizon?

6 MS. NEWMAN: Mr. Stubbs, could you direct
7 the witness to the language you're talking about,
8 please?

9 BY MR. STUBBS:

10 Q Do you see the proposed language?

11 A I have the proposed language.

12 MR. PERKINS: Should we identify the
13 revised decision point list as Staff Exhibit 1 at
14 this point?

15 MS. NATOLI: Actually, we're going to
16 decline to do that today, but you can use it for
17 refreshing his memory, and you can use it as a
18 demonstrative exhibit of your own. The FCC is going
19 to decline to do that.

20 BY MR. STUBBS:

21 Q I direct your attention to the Verizon
22 proposed contract language that states "Cavalier

1 shall pay Verizon for transit service that Cavalier
2 originates at the rate specified in Exhibit A." Is
3 there any equivalent stricture on Verizon?

4 A No, because at the moment, the -- what
5 we're talking about here is the transit service that
6 we are providing to Cavalier for the transport of
7 your traffic across our network, and we're not
8 giving you traffic to terminate to another party.
9 So again, in this case there would be no need for
10 reciprocity.

11 Q Turning to C5, issue C5. Conceptually,
12 what's the problem with reciprocity in advance? Is
13 there -- does Verizon have a problem with the
14 concept of reciprocity?

15 A I think I've said that we don't have an
16 issue with reciprocity in principle.

17 Q And -- my apologies. If Cavalier would
18 only pass properly assessed charges to Verizon, do
19 you believe it's appropriate for Verizon to only
20 pass properly assessed charges to Cavalier?

21 MS. NEWMAN: I have a clarification and
22 objection. Are you asking about transit traffic

1 again?

2 MR. STUBBS: No.

3 MS. NEWMAN: Are we beyond that?

4 MR. STUBBS: Oh, yes. We're not back on
5 C3 if that's what you mean. We're on C4.

6 MR. LERNER: I thought we were on C5.

7 MS. NEWMAN: I thought so too. That's why
8 I'm confused.

9 MR. STUBBS: I withdraw the question.

10 BY MR. STUBBS:

11 Q Turn to C5.

12 A Yes.

13 Q When Cavalier interconnects with carriers
14 at the meet point, I believe you've established that
15 Verizon would charge a transiting fee to the carrier
16 that passes the traffic; isn't that right?

17 A C5 or C4?

18 Q We're now moving to C5.

19 A We are on C5.

20 Q That's right.

21 A C5 I thought was whether we should provide
22 you with assistance in negotiating agreements with

1 other parties.

2 Q My question again is, I believe we
3 established when Cavalier interconnects with
4 carriers at the meet point, Verizon charges the
5 carrier passing the traffic; isn't that right? It's
6 called a transit fee.

7 A If we're talking about transit traffic,
8 where a CLEC who was not directly interconnected
9 with Cavalier passes traffic to Verizon for ultimate
10 termination on Cavalier's network, Verizon would
11 charge the originating carrier a transit service,
12 and that's for the use of our network to get their
13 traffic to Cavalier.

14 Q At the risk of rehashing what we talked
15 about before, it would be the originating carrier or
16 the carrier delivering the traffic to the meet
17 point; is that right?

18 A Well, in transit traffic, it's really the
19 originating carrier, if you're talking transit
20 traffic. If you're talking meet point billing,
21 we're now talking about access traffic coming from
22 another interexchange carrier. So I'm just --

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1 there's different fees that apply for different
2 services, and I'm not sure what service you're
3 referring to at this point.

4 Q But in both those situations, Verizon does
5 charge a fee?

6 A In the case of transit, we charge the
7 transit charge for the use of our network. And in
8 the meet point arrangement, we do have a charge that
9 we bill to the carrier.

10 Q So now is it theoretically possible that
11 Cavalier could negotiate directly with any or all of
12 the carriers out there for direct interconnection?

13 A It's certainly theoretically possible,
14 yes.

15 Q There's nothing that is any act or law or
16 standard that would require other carriers to
17 negotiate with Cavalier for direct interconnection,
18 though; is that right?

19 A I am not an expert on the law and whether
20 they would be required to directly interconnect or
21 not.

22 Q But you know of no such law or standard?

1 A I don't know of one and I don't know that
2 there isn't one.

3 Q Now, if theoretically Verizon -- excuse
4 me, strike that.

5 If theoretically Cavalier negotiated with
6 every other carrier out there for direct
7 interconnection, that would result in a 100 percent
8 reduction of the transit and access fees you just
9 described, because there wouldn't be any need for
10 the meet point or transit; isn't that right?

11 A I would assume.

12 MR. STUBBS: No further questions.

13 MR. KOERNER: Mr. Smith, turning to issue
14 C3, in the example Mr. Stubbs used of an IXC that
15 passes a call to Verizon for termination at Cavalier
16 but does not dip into the LNP, where to Cavalier
17 that call looks like a local call, does Verizon
18 charge the IXC for Verizon's dipping into the LNP?

19 MR. SMITH: Do we charge the IXC for the
20 LNP dip? I don't believe we do.

21 MR. KOERNER: What do you charge the IXC?

22 MR. SMITH: I think the IXC would be

1 charged the access charge for terminating the call
2 on us, but I'm not positive on that. I do know that
3 is only -- that's in the instance where the IXC
4 delivers it directly to the end office. If an IXC
5 were to deliver it to the tandem, where Cavalier is,
6 then we could be able to pass it through to
7 Cavalier. But it's only in the instance where it
8 goes to the wrong office, and we can't find the
9 phone number. So in the instance if it was tandem
10 interconnection or tandem-delivered traffic, we
11 would get it to Cavalier over their interconnection
12 trunks. It's only when we have to take it to the
13 end office, dip it and then find out how to get it
14 there.

15 MR. LERNER: If they haven't done an LNP
16 dip and it comes to the tandem, when do you do
17 your -- when would you do the LNP dip, when it's at
18 the tandem or after it's already gone to the end
19 office that it appears that it's headed to?

20 MR. SMITH: My understanding is if it
21 comes to the tandem behind which Cavalier is
22 connected, we would pass it directly through to them

1 from the tandem. The only time we have that problem
2 is when it comes to the end office, when that end
3 office says I don't have this number anymore, where
4 do I get it to, the tandem, I think, can identify
5 that it needs to go to Cavalier and pass it over the
6 appropriate trunks. That's my understanding.

7 MR. KOERNER: I want to step back more
8 generally. Can Verizon always tell for calls coming
9 to Verizon who the originating carrier and the
10 calling party number are?

11 MR. SMITH: No.

12 MR. KOERNER: In circumstances where you
13 cannot -- explain to me when you cannot, first.

14 MR. SMITH: Again, the originating carrier
15 could be, as we said, an ILEC or CLEC, out of state.
16 It's entirely possible that the call may have passed
17 through multiple carriers to get to us. And to the
18 extent that the originating number, the CPN, calling
19 party number, is not passed -- you know, we've read
20 a lot of instances in the press recently where
21 people have been stripping calling party number.
22 When that traffic comes in to us, we can't identify